



CONSTITUTIONAL COURT OF SOUTH AFRICA

Transport and Allied Workers Union of South Africa v Public Utility Transport Corporation Limited

CCT 94/15

Date of hearing: 10 November 2015

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Tuesday, 10 November 2015 at 10h00 the Constitutional Court will hear an application for leave to appeal against a judgment and order of the Labour Appeal Court. The question is whether, in response to a bargaining council strike, an employer can lawfully lock out employees who are members of a union that was not party to a bargaining council when the strike was called.

The applicant, Transport and Allied Workers Union of South Africa (TAWUSA), instituted urgent proceedings in the Labour Court and sought to stop the lock-out effected against its members by the respondent, the Public Utility Transport Corporation Limited (PUTCO).

In the Labour Court, TAWUSA argued that PUTCO was not entitled to lock out its members because they were not on strike. In response, PUTCO argued that the Labour Relations Act (LRA) entitled it to lock out all its employees once the majority unions had gone on strike. This, it argued, was a part of the collective bargaining scheme under the LRA. The Labour Court found that there was no basis in the LRA to imply that a lock-out could be directed at all employees. The primary purpose of a lock-out is to compel employees to accede to a specific demand by the employer. The Labour Court found that no dispute between the parties exists given that TAWUSA was not party to the bargaining council where the dispute arose, and no offer was made to its members. It was thus impermissible to lock out TAWUSA members who were not on strike.

PUTCO appealed to the Labour Appeal Court, which reversed the decision of the Labour Court and held that PUTCO's lock-out of TAWUSA members was lawful. It reasoned that the plain wording of the LRA was clear – once a union was on strike, all employees could be locked out for as long as they did not accede to the demand by an employer. The Labour Appeal Court found that there were ongoing negotiations taking place at the bargaining council; the outcome of these negotiations would bind TAWUSA members despite the fact that they were, at that time, unrepresented at the bargaining council. In addition, TAWUSA's members would benefit from any agreement reached through industrial action. PUTCO could accordingly lock out TAWUSA members until they agreed to PUTCO's demand. Given its finding that there was a dispute between the parties, the Labour Appeal Court concluded that TAWUSA rejected PUTCO's demand and therefore the lock-out was lawful. TAWUSA then appealed to this Court.

Before the Constitutional Court, TAWUSA argues that the Labour Appeal Court incorrectly held that the lock-out was lawful. It avers that a lock-out notice cannot be lawfully served in terms of the LRA on a non-striking union that is not a party to the dispute. TAWUSA contends that when there is no dispute between the parties, there can be no demand, and an employer can only resort to lock-out where it has made a demand. TAWUSA argues that, in the absence of a dispute between a union and an employer, the union's members cannot be locked out.

PUTCO submits that the Labour Appeal Court correctly decided the matter and that the appeal should accordingly be dismissed. It argues that TAWUSA was effectively a party to the ongoing dispute between PUTCO and the other unions at the bargaining council, as the advantages gained by those unions would automatically apply to TAWUSA's members. PUTCO accordingly could, and did, make a demand of TAWUSA members. PUTCO argues that this demand was rejected by TAWUSA, which entitled it to lock out its members accordingly.